

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
BellSouth Telecommunications, Inc.)	
Request For Declaratory Ruling That State)	
Commissions May Not Regulate)	
Broadband Internet Access Services By)	WC Docket No. 03-251
Requiring BellSouth To Provide)	
Wholesale Or Retail Broadband Services)	
To CLEC UNE Voice Customers)	
)	
Notice Of Inquiry)	

**REPLY COMMENTS OF VERIZON¹
IN RESPONSE TO NOTICE OF INQUIRY**

Many of the commenters that responded to the Commission's notice of inquiry – including the only other commenter to submit an economist's analysis² – strongly confirm that the Commission should not take regulatory action with regard to bundling and tying in the telecommunications industry.³ As these commenters explained, communications bundles, including the digital subscriber line ("DSL") bundles offered by many local exchange carriers,

¹ The Verizon telephone companies ("Verizon") are identified in Appendix A to Verizon's opening comments.

² BellSouth submitted the written testimony of Dr. William Taylor ("*Taylor Testimony*"), prepared in conjunction with proceedings at the Georgia Public Service Commission. See Comments of BellSouth Corporation, WC Docket No. 03-251 at Exhibit 1 (filed June 13, 2005) ("*BellSouth Comments*").

³ See generally *BellSouth Comments*; Comments of Sprint Corporation, WC Docket No. 03-251 (filed June 13, 2005) ("*Sprint Comments*"); Comments of Qwest Communications International Inc., WC Docket No. 03-251 (filed June 13, 2005) ("*Qwest Comments*"); Comments of MCI, Inc., WC Docket No. 03-251 (filed June 13, 2005) ("*MCI Comments*"); Comments of SBC Communications Inc. in Response to Notice of Inquiry, WC Docket No. 03-251 (filed June 13, 2005) ("*SBC Comments*"); Comments of Comcast Corporation, WC Docket No. 03-251 (filed June 13, 2005) ("*Comcast Comments*").

promote efficiency and benefit consumers. These commenters also demonstrated that local exchange carriers' DSL bundles do not present competitive concerns, given that the companies that offer them do not have market power in the market for broadband services. Moreover, as these commenters pointed out, local exchange carriers are increasingly competing in the broadband market by offering their DSL broadband services both as part of a bundle and on a "standalone" basis. Accordingly, the Commission should allow competitive forces, rather than regulatory mandates, to drive broadband providers' marketing decisions.

To the extent that other commenters argue that the Commission should begin forcing *some* (but not all) broadband providers to offer a particular broadband service – standalone DSL – their claims are misplaced. While they base their claims on the imagined anticompetitive effects created by carriers' offering DSL only as part of a package with local voice service, the fact of the matter is that the broadband marketplace is characterized by vigorous competition, and local exchange carriers are not the leading providers. These commenters also err in their account of the standalone broadband products currently available, thus ignoring that competitive factors are driving local exchange carriers increasingly to offer standalone DSL services. Accordingly, their claims should be rejected

ARGUMENT

Claims by some commenters that regulatory intervention is needed should be rejected for at least three reasons. As discussed in more detail below, these commenters ignore the vibrant competition in the broadband marketplace. These commenters also err in their description of the broadband products offered by local exchange carriers, and thus fail to acknowledge that competitive factors influence those offerings. Finally, imposing new regulatory requirements on

some – but not all – broadband providers would undermine the Commission’s stated policy goals of placing all broadband providers on equal footing.

First, claims that incumbent local exchange carriers’ bundles combining DSL with local voice service somehow stifle competition are belied by overwhelming evidence that competition in the broadband market is thriving. Claims of competitive harm are based on the notion that consumers are “forced” to purchase incumbent carriers’ wireline voice service “as a condition of broadband access to the Internet.”⁴ But as these commenters implicitly recognize, the only way that incumbent local exchange carriers could “force” consumers to purchase their voice service in this way would be if the market did not provide consumers a choice in broadband providers.⁵ In other words, there can be no harm to competition unless incumbent carriers have market power in the broadband market.

To the contrary, the comments overwhelmingly demonstrate that incumbent local exchange carriers do *not* have market power in the broadband market. As numerous parties detailed in their comments, the broadband market is characterized by intense competition involving a variety of broadband technologies, and there are multiple service provider options within each of the technology categories.⁶ As Verizon demonstrated in its opening comments,

⁴ Comments of CompTel/ALTS, WC Docket No. 03-251 at 6 (filed June 13, 2005) (“*CompTel/ALTS Comments*”); *see also, e.g.*, Comments of Earthlink, Inc., WC Docket No. 03-251 at 2-3 (filed June 13, 2005) (“*Earthlink Comments*”); Comments of RNK, Inc. d/b/a RNK Telecom, WC Docket No. 03-251 at 4 (filed June 13, 2005) (“*RNK Comments*”); Supplemental Initial Comments of Vonage Holdings Corp., WC Docket No. 03-251 at 3 (filed June 13, 2005) (“*Vonage Comments*”).

⁵ *See CompTel/ALTS Comments* at 7-8; *RNK Comments* at 14-15 n.25; *Earthlink Comments* at 2-3 nn.3 & 4.

⁶ *See, e.g., SBC Comments* at 10, 14-19; *BellSouth Comments* at 6-13; *see also Verizon Comments* at 15-23; Declaration of David S. Evans (“*Evans Decl.*”) ¶¶ 89-90 (submitted as an attachment to *Verizon Comments*).

more than 90% of American homes can now obtain a broadband connection from a provider *other* than their incumbent local phone company. See *Verizon Comments* at 19. Alternatives to DSL include cable modem service, satellite, and fixed and mobile wireless data services. Additional technologies, such as broadband over power line, continue to emerge.⁷ Of all of the broadband technologies currently available, it is cable modem service – *not* local exchange carriers' DSL service – that leads the market.

Indeed, the Commission's recent *High-Speed Services Report*⁸ confirms this "fierce competition" in the broadband market.⁹ As Chairman Martin has observed, the Commission's report confirms that "most Americans today can choose between several competing broadband service providers and service packages," and that cable modem service continues to lead the pack.¹⁰ According to the Commission's report, over 56% of all high speed access lines in service in the United States are cable modem lines, and over 72% of all advanced services lines are cable. *High Speed Services Report* at Chart 2 and Chart 4. By comparison, the DSL service that is offered by local exchange carriers trails 20 percentage points behind for high speed access lines, and further behind for advanced services lines. *Id.*

Given the intense competition in the broadband market, a local exchange carrier cannot "force" consumers to purchase that carrier's wireline voice service in order to obtain broadband service as some commenters claim. A consumer that wants broadband Internet access but does

⁷ See, e.g., *BellSouth Comments* at 6-11 (describing various competitive broadband platforms).

⁸ FCC IAD, *High Speed Services for Internet Access: Status as of December 31, 2004* (rel. July 7, 2005) ("*High Speed Services Report*") available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0705.pdf.

⁹ See Kevin J. Martin, *United States of Broadband*, Wall Street J., July 7, 2005, at A12.

¹⁰ Martin, *United States of Broadband* at A12.

not want his incumbent local exchange carriers' voice service can obtain broadband access from a number of sources other than his local phone company, such as a cable, satellite, or wireless company. Such a consumer may also purchase broadband access directly from the Internet Service Provider. *See BellSouth Comments* at 10-11; *Verizon Comments* at 17. DSL-voice bundles therefore do not stifle growth of Voice over IP ("VoIP") services by requiring VoIP consumers to purchase redundant voice service, as claimed by some commenters.¹¹ Nor are broadband consumers "forced" to choose between unwanted phone service and some other unwanted service, as claimed by Vonage. *See Vonage Comments* at 3. To the contrary, many of the leading broadband providers, such as cable companies, offer standalone broadband products. *See, e.g., Comcast Comments* at 3-4; *SBC Comments* at 15-16. Indeed, as discussed in more detail below, incumbent local exchange carriers are increasingly offering DSL service on a standalone basis as well.

The same facts regarding the competitive environment in the broadband market also defeat claims that incumbent local exchange carriers' DSL-voice bundles violate the antitrust laws against anticompetitive tying arrangements. Indeed, even the comments that attempt to invoke antitrust law explain the flaw in their own antitrust argument. For example, Earthlink explains that in a tying arrangement, the consumer cannot get the "tying" product without also purchasing the "tied" product (although the consumer may be able to purchase the "tied" product alone).¹² Thus, to the extent that local exchange carriers tie broadband and voice products, broadband access is the "tying" product and phone service is the "tied" product.¹³ Antitrust law

¹¹ *See, e.g., Vonage Comments* at 6.

¹² *See Earthlink Comments* at 2 n.3; *see also, e.g., Verizon Comments* at 6; Evans Decl. ¶ 15.

¹³ *See Earthlink Comments* at 2 n.3.

recognizes, and proponents concede, that not all tying arrangements are anticompetitive and indeed, many tying arrangements promote efficiency and benefit consumers.¹⁴ Rather, tying arrangements may be anticompetitive only where “the seller exploit[s] its control over the *tying product* to force the buyer into the purchase of a *tied product*.”¹⁵ Because local exchange carriers do not have market power over the *tying product* – broadband access – these DSL-voice bundles are not anticompetitive.¹⁶

Some comments nonetheless attempt to create the illusion of market power by defining an artificially narrow “DSL market.”¹⁷ In so doing, these commenters ignore existing law regarding market definition and the Commission’s own analysis of broadband products.¹⁸ The antitrust law has long recognized that a “market” includes all “commodities reasonably interchangeable by consumers for the same purposes.” *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956). Recognizing that all broadband products provide similar high-speed services and are thus reasonably interchangeable, the Commission has consistently emphasized that the broadband market “includes any platform capable of providing high-bandwidth intensive content.”¹⁹ Accordingly, the Commission’s competitive analyses have

¹⁴ See *CompTel/ALTS Comments* at 7-8; *RNK Comments* at 14 n.25; see also *BellSouth Comments* at 15; *Verizon Comments* at 5-7.

¹⁵ See *RNK Comments* at 14-15 n.25 (quoting *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2, 12 (1984) (emphases added)); see also *Earthlink Comments* at 2 n.4 (same).

¹⁶ See *SBC Comments* at 29-31; *BellSouth Comments* at 14-18; *Taylor Testimony* at 20-27; *Verizon Comments* at 16-20; Evans Decl. ¶¶ 87-91.

¹⁷ See, e.g., *CompTel/ALTS Comments* at 3.

¹⁸ See *SBC Comments* at 31.

¹⁹ See FCC Strategic Goals: Broadband, available at www.fcc.gov/broadband/; see also Draft Strategic Plan for 2006-2011 (“*Draft Strategic Plan*”) at 6-8, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-259814A1.pdf; *High Speed Services Report*.

consistently treated all broadband products – including DSL, cable modems, wireless services, satellite broadband, and more – as part of the same market, regardless of technology.²⁰

Second, claims that competition is insufficient to affect local exchange carriers' broadband product offerings are based on inaccurate accounts of the DSL products currently available. Some commenters argue that regulatory intervention is necessary because incumbent local exchange carriers will refuse to respond to consumer demand for standalone broadband products.²¹ As discussed above, over 90% of American households can obtain broadband service from a provider other than the incumbent local exchange carrier and, in fact, most Americans can choose between *several* competing broadband providers. Many of these broadband providers, including cable companies and others, offer broadband on a standalone basis. To the extent that consumers demand a standalone broadband product, market forces will ensure that they are available.

Moreover, the evidence demonstrates that incumbent local exchange carriers *are* responding to competition and consumer demands for standalone broadband products. For example, contrary to accounts by some commenters, an existing Verizon DSL customer – anywhere in Verizon's service area – can cancel his or her Verizon voice service and transfer his or her Verizon number to any facilities based provider, such as an independent VoIP provider, a

²⁰ See, e.g., *High Speed Services Report; Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, Third Report, 17 FCC Rcd 2844 (2002); see also *USTA v. FCC*, 290 F.3d 415, 429 (2002). Analysts in the financial sector, as well as broadband providers themselves, also treat broadband as a single market and analyze competition among the universe of broadband technologies. See generally, e.g., R. Bilotti *et al.*, Morgan Stanley Equity Research, *Broadband Update: Competition Varies Dramatically Across Regions* (April 15, 2005).

²¹ See *T-Mobile Comments* at 4; Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 03-251 at 2 (filed June 13, 2005) ("*NASUCA Comments*").

wireless company, or a facilities based CLEC, and still retain Verizon DSL service. *See* Verizon Tariff FCC No. 1, § 16.8(D)4; Verizon Tariff FCC No. 20, § 5.1.2(D). In addition, new customers in Verizon's former Bell Atlantic areas can sign up for Verizon DSL service without Verizon voice service; Verizon plans to expand this offering throughout the rest of its service area later this year.²² *See* Verizon Tariff FCC No. 1, § 16.8(D)4; Verizon Tariff FCC No. 20, § 5.1.2 9(D). Other incumbent carriers submitting comments in this proceeding also have indicated that they are currently offering or investigating standalone DSL offerings.²³

Finally, imposing new broadband regulation on local exchange carriers – but not on other broadband providers – as some commenters suggest would mark an unnecessary and misguided step backwards in the Commission's broadband policy goals. The Commission has recognized frequently recognized that in order to promote competition and innovation in broadband, the Commission's broadband policies must apply equally to all broadband products, regardless of the technological platform used.²⁴ As Chairman Martin summarized, "We need to place all broadband providers on equal footing so that they can fairly compete in the marketplace. This means that we must treat all such providers in the same manner – free of undue regulation that can stifle infrastructure investment."²⁵

²² Verizon's former Bell Atlantic jurisdictions are Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New Jersey, Rhode Island, New York, Pennsylvania, Delaware, West Virginia, Virginia, Maryland, and the District of Columbia.

²³ *See BellSouth Comments* at 18-19 (describing BellSouth's standalone DSL offerings); *SBC Comments* at 18-19 (discussing SBC's efforts experimenting with a standalone product); *see also MCI Comments* at 8 (discussing Qwest's standalone DSL product and SBC's work on standalone DSL); *NASUCA Comments* at 2 (same); *CompTel/ALTS Comments* at 4 (acknowledging Qwest's standalone DSL product).

²⁴ *See, e.g., Draft Strategic Plan* at 6-7; *Strategic Goals for Broadband*, available at www.fcc.gov/broadband/.

²⁵ Martin, *United States of Broadband* at A12.

Consistent with these policy goals, the Commission needs to *deregulate* telephone companies' broadband offerings by extending its cable broadband policies to telecommunications companies. The Commission decided in the *Cable Modem Declaratory Ruling* to refrain from regulating cable companies' provision of broadband services – a decision recently upheld by the United States Supreme Court.²⁶ Commissioners and others heralded the Supreme Court's decision as an important step in speeding the deployment of broadband – *and ensuring that broadband providers are treated equally*. As Chairman Martin explained, “[the Supreme Court's decision] was an important victory for broadband providers and consumers. Cable companies will continue to have incentives to invest in broadband networks The decision also paves the way for the FCC to place telephone companies on equal footing with cable providers. We can now move forward and remove the legacy regulation that reduces telephone companies' incentive to provide broadband.”²⁷

The regulatory action advocated by some commenters here would mark a radical departure from these goals and a misguided step backwards in broadband deployment and policy. These commenters would have the Commission engage in the very type of heavy-handed regulation that the Commission has sought to avoid: issuing a regulatory mandate as to which broadband products providers must offer and how providers may and may not package them. Moreover, these commenters apparently would have the Commission apply this heavy-handed regulation only to *some* broadband providers and technologies – incumbent local exchange carriers' DSL products – contrary to the Commission's goal of “plac[ing] all broadband

²⁶ See *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, No. 04-277, 545 U.S. __ (June 27, 2005).

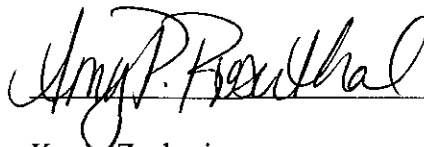
²⁷ See Martin, *United States of Broadband* at A12; see also FCC News, *Commissioner Abernathy's Statement Regarding the Supreme Court's Decision in Brand X* (rel. June 27, 2005), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-259628A1.pdf.

providers on equal footing.”²⁸ The Commission should not retreat from its broadband goals now by imposing additional regulatory requirements unequally across broadband providers.

CONCLUSION

For the foregoing reasons, the Commission should allow competitive forces, rather than regulatory mandates, to determine whether and how companies market communications products in bundles.

Respectfully submitted,



Michael E. Glover
Of Counsel

Karen Zacharia
Amy P. Rosenthal
1515 N. Court House Road
Suite 500
Arlington, VA 22201-2909
703.351.3175
Counsel for Verizon

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²⁸ See Martin, *United States of Broadband* at A12.